

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

and Case No. 14-CV-704-GFK-JFJ

OSAGE MINERALS COUNCIL,

Intervenor-Plaintiff,

vs.

OSAGE WIND, LLC;
ENEL KANSAS, LLC; and
ENEL GREEN POWER NORTH
AMERICA, INC.,

Defendants.

15 VIDEO ZOOM DEPOSITION OF MICHAEL STORCH
16 TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF
17 ON JUNE 28, 2021, BEGINNING AT 9:06 A.M.

24 VIDEOTAPED BY: Stesha Snow
25 REPORTED BY: D. Luke Epps, CSR, RPR

APPEARANCES			Page 2	INDEX			Page 4
1	2	On behalf of the PLAINTIFF:		1	2	INDEX	
3	Mr. Nolan Fields, Esq.			3	2	EXAMINATION	Page
4	Ms. Cathryn D. McClanahan, Esq.			4	3	Examination by Ms. Nagle	11
5	UNITED STATES ATTORNEY'S OFFICE			5	4	Examination by Mr. Fields	142
6	Northern District of Oklahoma			6	5	Examination by Ms. Nagle	230
7	110 West 7th Street, Suite 300			7			
8	Tulsa, Oklahoma 74119			8	7	EXHIBITS	
9	(918) 382-2700			9	8	EXHIBIT	Description
10	nolan.fields@usdoj.gov			10	36	10/31/12 Modrall, Sperling Memorandum to Bill Scott Re: Rights of Surface Owners to Use Oil - Osage Wind Priv-000414 - 000420 (Previously marked)	95
11	Christina Watson, Paralegal			11	38	10/9/14 Email from Robin Phjillips to Francesco Venturini - Osage Wind Priv-000243 (Previously marked)	90
12	Michelle Hammock, Paralegal			12	60	Defendants' Response to Plaintiff's Motion for Preliminary Injunction - Exhibit 1 (Previously marked)	144
13	Mr. Charles R. Babst, Esq.			13	78	Membership Interest Purchase Agreement -Osage Wind-021248 - 021320	30
14	TULSA FIELD SOLICITOR'S OFFICE			14	79	Membership Interest Purchase Agreement Between Enel Kansas, LLC, and TradeWind Energy, Inc., Dated as of September 17, 2014 - Execution Version - Osage Wind-021119 - 021222	54
15	U.S. DEPARTMENT OF THE INTERIOR			15	80	Amended and Restated Osage Project Loan Agreement - Enel Draft of 4/8/14 - Osage Wind-014724 - 014735	72
16	7096 East 33rd Street			16	81	Defendants' Response to Plaintiff's Motion for Preliminary Injunction - Exhibit 4	119
17	Tulsa, Oklahoma 74145			17			
18	(918) 669-7902			18			
19	On behalf of the INTERVENOR-PLAINTIFF:			19			
20	Ms. Mary Kathryn Nagle, Esq.			20			
21	Mr. Ridge Howell, Esq.			21			
22	PIPESTEM & NAGLE			22			
23	401 South Boston Avenue, Suite 2200			23			
24	Tulsa, Oklahoma 74103			24			
25	(918) 936-4705			25			
1	2	On behalf of the DEFENDANTS:		1	2	EXHIBITS (Continued)	
3	Ms. Sarah M. Stevenson, Esq.			3	3	EXHIBIT	Description
4	Mr. Lynn H. Slade, Esq.			4	82	11/4/14 Email Chain Between Joan Heredia, Mike Storch and Others - Subject: Burbank Materials Rock Quarry - Osage Wind-040087 - 040091	133
5	MODRALL, SPERLING, ROEHL, HARRIS & SISK			5	83	Defendants' Response to Plaintiff's Motion for Preliminary Injunction - Exhibit 1	155
6	500 Fourth Street NW, Suite 1000			6	84	10/16/14 Email from Nick Lincon to David Post - Subject: Osage BIA Discussion Attorney Client Privilege - Osage Wind-000114 - 000115	198
7	Albuquerque, New Mexico 87103			7	85	10/16/14 Email from David Post to Francesco Venturini - Subject: Client - Attorney Privilege: Osage - Osage Wind Priv-000112 - 000113	205
8	(505) 848-1800			8	86	10/17/14 Email from David Post to Joan Heredia - Subject: Osage Wind Construction Activity - Osage Wind-040096 - 040098	209
9	sarah.stevenson@modrall.com			9	87	10/21/14 Email from Steve Champagne to Giulio Fazio - Subject: TradeWind/Osage Nation Wind Project/85910-0001 - Osage Wind-040106 - 040107	212
10	lynn.slade@modrall.com			10	88	10/23/14 Email from Steve Champagne to Mike Storch - Subject: Summary of Osage Call Today - Osage Wind-040104 - 040105	217
11	Mr. Ryan A. Ray, Esq.			11			
12	NORMAN WOHLGEMUTH			12			
13	401 South Boston Avenue, Suite 3200			13			
14	Tulsa, Oklahoma 74103			14			
15	(918) 583-7571			15			
16	fray@nwlawok.com			16			
17				17			
18				18			
19				19			
20				20			
21				21			
22				22			
23				23			
24				24			
25				25			

Page 130

1 MS. STEVENSON: Object to the form.
 2 THE WITNESS: But I -- I have no idea.
 3 Q (BY MS. NAGLE) Okay. All right. So do
 4 you know who would know why Rosette was taken out of
 5 the memo? Is there someone who you think would have
 6 the answer to that question?

7 A I'm going to take a wild guess and suggest
 8 the author, but that's just a guess.

9 Q And so that would be either Lynn Slade or
 10 Bill Scott; is that correct?

11 A They're the names on the memo, so, yes.

12 Q Okay. Do you know of any other names of
 13 individuals who would have worked on this memo
 14 besides Bill Scott or Lynn Slade?

15 A Again, that's internal to the firm, so
 16 I -- I have no idea.

17 Q Okay. All right. So if we go to page 5,
 18 Exhibit 81 -- let me see here. And so I'm looking
 19 at this language right here. It says, "The
 20 reservation of the mineral rights reserved under the
 21 SH" -- sorry, "SRHA is similar to that of the Osage
 22 Allotment Act, although the contemplated surface
 23 uses under the SRHA are perhaps narrower than the
 24 general grant of surface rights for patentees under
 25 the Osage Allotment Act." What is your

Page 132

1 A I don't know how many times I'll need to
 2 say this during this conversation, but I had nothing
 3 to do with the drafting of this memo, provided no
 4 input, saw no drafts, made no comparison between the
 5 previous one and this one. I simply confirmed that
 6 the conclusions reached were comforting and a basis
 7 for us to feel very comfortable in continuing to
 8 move the project forward.

9 Q Okay.

10 A The comparison, it's not that it means
 11 nothing, but it doesn't mean anything to me, you
 12 know, in the context of the decision process around
 13 the project and moving it forward.

14 Q Uh-huh. Did you -- was there ever a point
 15 in time, at any point in this process, when you
 16 personally believed that perhaps a permit might be
 17 required or you weren't sure whether a permit from
 18 the Osage Nation would be required?

19 A No. I mean, you know, when I first became
 20 aware of this, we had the benefit of the 2013, you
 21 know, memo, so there was no reason to be anything
 22 other than 100 percent confident because, again, it
 23 wasn't written in a way that was more likely than
 24 not or some wishy-washy kind of language. It was
 25 quite conclusive.

Page 131
 1 understanding of the significance of that sentence
 2 here in this memo?

3 A Well, it suggests that the Osage Allotment
 4 Act is broader in terms of the ability of the
 5 surface rights to be used by the holders of the
 6 surface rights, if I'm reading that correctly, and
 7 that the other act refers to something that is more
 8 restrictive or narrower in terms of what is
 9 contemplated.

10 Q Uh-huh. I will note that in the prior
 11 version of the memo -- my apologies. Let me turn
 12 that off. Let's see if we can find it here. Now,
 13 I'm going to have to actually remember exactly where
 14 it's at. Okay. Here we go. The bottom of page 4,
 15 for Exhibit 36, it states, "The mineral rights
 16 reserved under the Stock-Raising Homestead Act are
 17 done so in language similar to that of the Osage
 18 Allotment Act." I don't see any language here about
 19 one being narrower than the other. It appears that,
 20 in Exhibit 81, this language, you know, "although
 21 the contemplated surface uses under the SRHA are
 22 perhaps narrower than the general grant," do you
 23 know when, in the performance of the legal analysis,
 24 the determination was made in terms of which of the
 25 two statutes were narrower than the other?

Page 133

1 Q Uh-huh.

2 A The only time doubts arose would have been
 3 in -- when the decision was made suggesting
 4 otherwise back in 2017.

5 Q Okay. So let's -- I'd like to show
 6 another exhibit, and let me just pull that up. And
 7 so this is going to be, I believe, Exhibit 82, and I
 8 will show it here in just a moment. This is a
 9 document Bates stamped Osage Wind-040087, and it
 10 looks like this top email here is from you to Joan
 11 Heredia and quite a few folks, from November 4th,
 12 2014. Does this email exchange look familiar to
 13 you?

14 (Exhibit 82 marked for identification.)

15 A I'm sorry. Repeat that.

16 Q So I was just asking if this email
 17 exchange looks familiar to you.

18 A Yeah. I vaguely remember it.

19 Q Okay. So -- let me see. If we go down to
 20 the very bottom of this email exchange, it's quite a
 21 long one, it sort of concludes here on Bates stamp
 22 040091, really quick, who is Jack -- I don't know if
 23 I'm going to pronounce this correct, Thirolf?

24 A Jack. Yeah. He's, you know, part of our
 25 communication team. At this time he may have